

III. REMARKS

A. Summary of the Amendments

The specification has been amended in order to correct minor informalities in the abstract.

No amendments have been made to the drawings.

The present application now contains 25 claims.

Claims 1-13, 22-24, 26-28, 30, 32, 34, 36, 42 and 50-56 have been cancelled from the present application without prejudice. The Applicant reserves the right to pursue protection for these claims in a continuation application to be filed at a later date.

Claims 14-21, 29, 31, 33, 35, 37-41 and 43-49 remain the same.

Claim 25 has been amended in order to better define the subject matter being claimed. No new matter has been added in the current amendments and it is not believed that a new search is required in light of these amendments.

B. Response to the Objection to the Specification

In the Office Action, the Examiner has objected to the specification and has indicated that the language of the abstract should avoid using phrases such as "the present invention".

In response, the Applicant respectfully submits that the specification has been amended such that the abstract no longer includes the phrase "the present

invention". The Specification is now believed to be in compliance with the Patent Act and Rules.

C. Response to the Objections to the Drawings

In the Office Action, the Examiner has objected to the drawings under 37 CFR §1.83(a) and indicates that the drawings must show every feature of the invention specified in the claims. For the reasons presented below, the Applicant respectfully submits that the drawings, as they currently stand, are in compliance with 37 CFR §1.83(a).

37 CFR §1.83(a) simply states that "the drawing in a non-provisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g. a labeled rectangular box)."

Firstly, with respect to the Examiner's allegation that the claims recite a "biometric sensor", a "retinal scanner" and a "DNA input", the Applicant respectfully disagrees. These terms are not used anywhere in the claims.

Instead, claim 18 recites "a biometric parameter", which as indicated in the independent claims from which this claim depends, is a form of "user identification data" received at an input for receiving the user identification data. The Applicant respectfully submits that Figures 1, 2 and 3 include a rectangular box labeled as an "identification interface 20", that as indicated on page 10 of the present application, "is operative for receiving user identification data entered by a user." Accordingly, this element of the claims is represented in the Figures.

In addition, the claims do not recite a "retinal scanner" as alleged by the Examiner, and instead recite that the biometric parameter can be *retinal scan data*". The Applicant once again directs the Examiner's attention to page 10 of the present application which indicates that the "identification interface 20 can include a keypad, a touch-sensitive screen, an input capable of reading a computer readable storage medium, a key hole, **a fingerprint reader, a retinal scan reader**, a voice interface or any other suitable type of reader known in the art for receiving user identification data". Accordingly, the Applicant respectfully submits that an element suitable for receiving retinal scan data is adequately shown in the drawings, and that as such the drawings are sufficient for providing sufficient understanding, as per 37 CFR §1.83(a) of the patent rules.

Once again, the claims do not recite a "DNA input" as alleged by the Examiner, and instead recite that the biometric parameter, which is clearly disclosed as being received at the "identification interface 20" can include DNA data. As such, it would be clear to a reader that the box labeled "identification interface 20" would be suitable for receiving DNA data. Accordingly, the drawings are believed to be adequate for providing sufficient understanding, as per 37 CFR §1.83(a) of the patent rules.

The Examiner further indicates that the different types of prompts recited in claims 38-41 are not shown in the drawings. The Applicant respectfully disagrees. Figure 4, shows element 53, which is described on page 20 of the description as being "a visual prompt 53, in the form of a flashing light in order to prompt the user to enter user identification data. Other types of prompts 53 such as audio prompts, text prompts or any other suitable form of prompt known in the art could also be used without departing from the spirit of the invention..." As such, the Applicant respectfully submits that an element (prompt 53) which is described as being suitable for providing a visual prompt, an audio prompt or a text prompt is shown in the drawings. Accordingly, the

drawings are believed to be adequate for providing sufficient understanding, as per 37 CFR §1.83(a) of the patent rules.

Finally, the Examiner indicates that the transmission termination event input recited in claims 43-49 is not shown. Firstly, the Applicant respectfully submits that the claims do not disclose a "transmission termination event input", but instead simply a transmission termination event. As described in the specification on page 21, in one embodiment of the invention "the user interface 42 of the remote control device 12 includes a user input for enabling the user to enter the termination signal. As such, once the user of the remote control device 12 is finished using the remote control device 12, the user can simply activate the user input in order to enter the termination signal." Given that figure 4 shows the user interface 42 with a plurality of user inputs, it is respectfully submitted that the drawings are adequate for providing sufficient understanding, as per 37 CFR §1.83(a) of the patent rules.

In light of the above, the Applicant respectfully submits that the drawings show every feature of the invention at least indirectly, if not directly, and that given that the components identified by the Examiner are conventional features for which illustration is not essential for proper understanding, that the drawings are in compliance with 37 CFR §1.83(a). Withdrawal of the Examiner's objections to the drawings is respectfully requested.

D. Response to the Double Patenting Objection

In the Office Action, the Examiner has rejected claims 14, 25, 29, 31, 33, 35, 37 and 43 under the grounds of non-statutory obviousness-type double patenting, over claims 1, 3-4, 11, 13-14, 20 and 22-23 of co-pending U.S. Patent Application No. 10/667,641.

Given that this is simply a provisional obviousness-type double patenting rejection, the Applicant respectfully submits that a terminal disclaimer in accordance with 37 CFR §1.321(c) will be filed at a later date, once the claims currently pending have been considered allowable over the prior art references cited by the Examiner.

E. Response to the Rejection under 35 USC §102(e)

On page 6 of the Office Action, the Examiner has rejected claims 14-21, 25, 29, 31, 33, 37, 39, 41 and 43-45 under 35 USC §102(e) as being unpatentable over U.S. Patent Publication 2004/02454410 (hereafter to be referred to as Kisak et al.)

For the reasons presented below, the Applicant respectfully submits that these claims, as they currently stand, are in condition for allowance.

Claims 14-21

The Examiner's attention is respectfully directed towards the following limitations of independent claim 14.

- A remote control device for controlling a locomotive, said remote control device comprising:**
- (a) a first input for receiving a command signal from a user, the command signal being indicative of a command to be executed by the locomotive;**
 - (b) a second input distinct from said first input, said second input being adapted for receiving user identification data;**
 - (c) a processing unit operative to transmit a control signal indicative of a command to be executed by the locomotive when the user identification data belongs to an authorized user.**

The Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the above-emphasized limitations of independent claim 14. More specifically, Kisak et al. does not disclose a remote control device having a second input "adapted for receiving user identification data" and "a processing unit operative to transmit a control signal

indicative of a command to be executed by the locomotive when the user identification data belongs to an authorized user”.

In the Office Action, the Examiner contends that the locomotive control system 100 disclosed by Kisak et al. is a remote control device, as defined in independent claim 1. The Applicant respectfully disagrees with the Examiner's allegation. In paragraph [0028], Kisak et al. simply discloses that “*components* of control system 100 may in other embodiments be distributed *in part* to one or more vehicles or locations that are remote from the locomotive”. Nowhere does Kisak et al. disclose that the entire control system 100 may be embodied as a system located remotely from a locomotive. Furthermore, nowhere does Kisak et al. specifically disclose that the operator authorization input 136 could be located remotely from the locomotive.

Although Kisak et al. does disclose a locomotive remote control system 144, nowhere is it disclosed that this remote control system can include any form of input for receiving user identification data. In addition, even if it could be argued that the operator authorization input 136 could be located at the locomotive remote control system 144 (which is not actually taught by Kisak et al.) nowhere is it disclosed that the locomotive remote control system 144 also includes a processing unit that is “operative to transmit a control signal indicative of a command to be executed by the locomotive when the user identification data belongs to an authorized user”[emphasis added].

In light of the above, the Applicant respectfully submits that Kisak et al. does not teach the above-emphasized limitations of independent claim 14, and that the Examiner is using the benefit of hindsight to read more into Kisak et al. than is actually taught.

As per §2131 of the MPEP, in order “to anticipate a claim, the reference must teach every element of the claim”. Since Kisak et al. does not teach the above-

emphasized limitations of independent claim 14, the Applicant respectfully submits that Kusak et al. is not sufficient to support a rejection based on anticipation, and that claim 14 is in allowable form over the cited reference. The Examiner is thus respectfully requested to withdraw the rejection to independent claim 14.

Claims 15-21 depend from independent claim 14 and, as such, incorporate by reference all the claim limitations contained therein, including the above limitations which has already been shown to be absent from Kusak et al. Accordingly, claims 15-21 are also believed to be in allowable form as being dependent upon an allowable base claim. The Examiner is also respectfully requested to withdraw the rejection to dependent claims 15-21.

Claim 25

The Examiner's attention is respectfully directed towards the following limitation of independent claim 25, as amended.

- A method for **remotely controlling a locomotive**, said method comprising:
- (a) receiving at a first input of a remote control device a command signal from a user, the command signal being indicative of a command to be executed by the locomotive;
 - (b) **receiving at a second input of the remote control device that is distinct from said first input user identification data, the second input being dedicated for receiving the user identification data;**
 - (c) **transmitting over a wireless communication link a control signal indicative of the command to be executed by the locomotive when the user identification data belongs to an authorized user.**

For the same reasons as those presented above with respect to independent claim 14, the Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the above-emphasized limitations of independent claim 25. More specifically, Kusak et al. does not disclose "receiving at a second input of the remote control device...user identification data" nor "transmitting over a wireless communication link a control signal indicative of the command to be executed by the locomotive

when the user identification data belongs to an authorized user”.

Accordingly, as per §2131 of the MPEP, the Applicant respectfully submits that Kisak et al. is not sufficient to support a rejection based on anticipation, and that claim 25 is in condition for allowance over the cited reference.

Claim 29

The Examiner's attention is respectfully directed towards the following limitation of independent claim 29.

A remote control device for controlling a locomotive, said remote control device comprising:

- (a) a first input for receiving a command signal from a user, the command signal being indicative of a command to be executed by the locomotive;**
- (b) a second input operative to receive user identification data indicative of a fingerprint;**
- (c) a user authentication unit operative for processing the user identification data to generate verification data indicative of whether the user identification data belongs to an authorized user;**
- (d) a processing unit operative for transmitting a control signal indicative of the command to be executed by the locomotive when the verification data indicates that the user identification data belongs to an authorized user.**

The Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the above-emphasized limitations of independent claim 29. More specifically, for the same reasons as those presented above with respect to claim 14, Kisak et al. does not disclose a remote control device having a second input “operative to receive user identification data” and “a processing unit operative to transmit a control signal indicative of a command to be executed by the locomotive when verification data indicates that the user identification data belongs to an authorized user”.

The Applicant further submits that Kisak et al. does not disclose a remote control device that includes a “user authentication unit operative for processing the user identification data to generate verification data indicative of whether the user identification data belongs to an authorized user”. In paragraph [0025]

Kisak et al. indicates that the "operator authorization input device 136 provides the ability for control system 100 to verify the authorization and authentication of a person attempting to operate the locomotive". As argued above with respect to independent claim 1, nowhere does Kisak et al. disclose that the operator authorization input 136 is located within a remote control device, nor does Kisak et al. disclose that the remote locomotive control system 144 is operative to process user identification data".

In light of the above, the Applicant respectfully submits that Kisak et al. is not sufficient to support a rejection based on anticipation, as per §2131 of the MPEP, and the Examiner is thus respectfully requested to withdraw the rejection to dependent claim 29.

Claim 31

The Examiner's attention is respectfully directed towards the following limitations of independent claim 31.

A remote control device for controlling a locomotive, said remote control device comprising:

- (a) **a first input for receiving a command signal from a user, the command signal being indicative of a command to be executed by the locomotive;**
- (b) **a second input operative to receive user identification data via a keypad;**
- (c) **a user authentication unit operative for processing the user identification data to generate verification data indicative of whether the user identification data belongs to an authorized user;**
- (d) **a processing unit operative for transmitting a control signal indicative of the command to be executed by the locomotive when the verification data indicates that the user identification data belongs to an authorized user.**

For the same reasons as those presented above with respect to independent claim 29, the Applicant respectfully submits that Kisak et al. does not disclose, teach or suggest the above-emphasized limitations of independent claim 31. Accordingly, the Applicant respectfully submits that Kisak et al. is not sufficient to support a rejection based on anticipation, as per §2131 of the MPEP. The Examiner is respectfully requested to withdraw the rejection to independent claim 31.

Claim 33

The Examiner's attention is respectfully directed towards the following limitation of independent claim 33.

A remote control device for controlling a locomotive, said remote control device comprising:

- (a) a first input for receiving a command signal from a user, the command signal being indicative of a command to be executed by the locomotive;**
- (b) a second input operative to receive user identification data via a retina scanner;**
- (c) a user authentication unit operative for processing the user identification data to generate verification data indicative of whether the user identification data belongs to an authorized user;**
- (d) a processing unit operative for transmitting a control signal indicative of the command to be executed by the locomotive when the verification data indicates that the user identification data belongs to an authorized user.**

For the same reasons as those presented above with respect to independent claims 29 and 31 the Applicant respectfully submits that Kisak et al. does not disclose, teach or suggest the above-emphasized limitations of independent claim 33. More specifically, Kisak et al. does not disclose a remote control device having a second input "operative to receive user identification data" and "a processing unit operative to transmit a control signal indicative of a command to be executed by the locomotive when verification data indicates that the user identification data belongs to an authorized user". Nor does Kisak et al. disclose "a user authentication unit operative for processing the user identification data to generate verification data indicative of whether the user identification data belongs to an authorized user" as set forth with respect to independent claim 29. Accordingly, Kisak et al. is not sufficient to support a rejection based on anticipation, as per §2131 of the MPEP and the Examiner is respectfully requested to withdraw the rejection to independent claim 33.

Claim 37

The Examiner's attention is respectfully directed towards the following limitation of independent claim 37.

A remote control device for controlling a locomotive, said remote control device comprising:

- (a) a first input for receiving a command signal from a user, the command signal being indicative of a command to be executed by the locomotive;**
- (b) a second input operative to receive user identification data;**
- (c) said remote control device being adapted to issue a prompt for indicating to a user to provide user identification data;**
- (d) a processing unit operative to transmit a control signal indicative of a command to be executed by the locomotive when the user identification data belongs to an authorized user.**

The Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the above-emphasized limitations of independent claim 37. More specifically, for the same reasons as those presented above with respect to independent claim 29, Kisak et al. does not disclose a remote control device having a second input "operative to receive user identification data" and "a processing unit operative to transmit a control signal indicative of a command to be executed by the locomotive when the user identification data belongs to an authorized user".

In addition, Kisak et al. does not disclose a remote control device "being adapted to issue a prompt for indicating to a user to provide user identification data". Instead, Kisak et al. discloses in paragraph [0024] that the control system 100 includes a display device 126 that is able to prompt an operator for an authorization input. Nowhere does Kisak et al. disclose that the display device 126 for prompting the user can be located remotely from the locomotive, nor does Kisak et al. disclose that the remote locomotive control system 144 includes any form of display, or other equipment suitable for prompting a user to provide user identification data.

In light of the above, the Applicant respectfully submits that Kisak et al. fails to disclose a number of limitations recited in independent claim 37. Accordingly, Kisak et al. is not sufficient to support a rejection based on anticipation, as per §2131 of the MPEP, and the Examiner is thus respectfully requested to

withdraw the rejection to dependent claim 37.

Claims 39 and 41 depend from independent claim 37 and, as such, incorporate by reference all the claim limitations contained therein, including the above limitation which has already been shown to be absent from Kusak et al. Accordingly, claims 39 and 41 are also believed to be in allowable form as being dependent upon an allowable base claim. The Examiner is also respectfully requested to withdraw the rejection to dependent claims 39 and 41.

Claim 43

The Examiner's attention is respectfully directed towards the following limitation of independent claim 43.

A remote control device for controlling a locomotive, said remote control device comprising:

- (a) a first input for receiving a command signal from a user, the command signal being indicative of a command to be executed by the locomotive;
- (b) **a second input operative to receive user identification data;**
- (c) **an authentication unit operative for processing the user identification data to generate verification data indicative of whether the user identification data belongs to an authorized user;**
- (d) **a processing unit operative to:**
 - (1) **transmit a control signal indicative of a command to be executed by the locomotive when the user authentication unit confirms that the user identification data belongs to an authorized user;**
 - (2) in response to a transmission termination event, said processing unit being adapted to cease the transmission of control signals indicative of commands to be executed by the locomotive.

The Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the above-emphasized limitations of independent claim 43. More specifically, for the same reasons as those presented above with respect to claim 29, Kusak et al. does not disclose a remote control device having a second input "operative to receive user identification data" and "a processing unit operative to transmit a control signal indicative of a command to be executed by the locomotive when the user identification data belongs to an authorized user". Nor does Kusak et al.

disclose "a user authentication unit operative for processing the user identification data to generate verification data indicative of whether the user identification data belongs to an authorized user".

In light of the above, the Applicant respectfully submits that Kisak et al. does not disclose all of the limitations of independent claim 43. Accordingly, Kisak et al. is not sufficient to support a rejection based on anticipation, as per §2131 of the MPEP, and the Examiner is respectfully requested to withdraw the rejection to dependent claim 43.

F. Response to the Rejection of claims 35, 38 and 40 under 35 USC §103(a)

In the Office Action, the Examiner has rejected claims 35, 38 and 40 under 35 USC §103(a) as being unpatentable over Kisak et al.

Claim 35

The Examiner's attention is respectfully directed towards the following limitation of independent claim 35.

A remote control device for controlling a locomotive, said remote control device comprising:

- (a) a first input for receiving a command signal from a user, the command signal being indicative of a command to be executed by the locomotive;
- (b) a second input operative to receive user identification data indicative of DNA information;
- (c) a user authentication device operative for processing the user identification data to generate verification data indicative of whether the user identification data belongs to an authorized user;
- (d) a processing unit operative for transmitting a control signal indicative of the command to be executed by the locomotive when the verification data indicates that the user identification data belongs to an authorized user.

For the same reasons as those presented above with respect to independent claims 29, 31 and 33, the Applicant respectfully submits that Kisak et al. does not disclose, teach or suggest the above-emphasized limitations of

independent claim 35. More specifically, Kisak et al. does not disclose a remote control device having a second input "operative to receive user identification data" and "a processing unit operative to transmit a control signal indicative of a command to be executed by the locomotive when the user identification data belongs to an authorized user."

In the Office Action, the Examiner indicates that Kisak et al. does not disclose "DNA information" but that this limitation is just a matter of obvious design choice which would have been obvious to one of ordinary skill in the art in view of the biometric information of Kisak et al. The Applicant agrees with the Examiner that Kisak et al. does not disclose the limitation of providing DNA information. However, the Applicant does not agree that claim 35 would be obvious due to the fact that this would have been an obvious design choice. More specifically, regardless of whether providing DNA information would have been an obvious design choice, Kisak et al. still fails to disclose the other limitations of claim 35 that have been emphasized above.

In accordance with §2142 of the MPEP, in order to establish a *prima facie* case of obviousness, the reference cited must teach all the limitations found in the claim. Since Kisak et al. does not disclose the above-emphasized limitations of independent claim 35, the Applicant respectfully submits that this reference is insufficient to establish a rejection based on obviousness. Accordingly, the Examiner is respectfully requested to withdraw the rejection to independent claim 35.

Claims 38 and 40

With regard to claims 38 and 40, the Applicant respectfully submits that these claims depend from independent claim 37, and as such, incorporate by reference all the limitations contained therein, including those which have already been found to be absent from Kisak et al. Accordingly, the Applicant respectfully submits that this reference is insufficient for establishing a *prima*

facie case of obviousness as per § 2143.03 of the MPEP. Accordingly, the Examiner is respectfully requested to withdraw the rejection to dependent claims 38 and 40.

G. Response to the Rejection of claims 46-49 under 35 USC §103(a)

The Examiner has further rejected claims 46-49 under §103(a) as being unpatentable over Kusak et al. in view of U.S. Patent Publication 2005/0039027 (hereafter to be referred to as Shapiro).

With regard to claims 46-49, the Applicant respectfully submits that these claims depend from independent claim 43, and as such, incorporate by reference all the limitations contained therein, including the following limitations which have already been found to be absent from Kusak et al.

(b) a second input operative to receive user identification data;

....

(d) a processing unit operative to:

- transmit a control signal indicative of a command to be executed by the locomotive when the user authentication unit confirms that the user identification data belongs to an authorized user;

The Applicant further submits that these limitations are also absent from Shapiro. More specifically, Shapiro relates to smart identification systems and discloses a portable device for authenticating an individual's identity. However, Shapiro does not disclose the above-emphasized limitations of independent claim 43.

More specifically, Shapiro does not disclose anything relating to a locomotive, and as such, does not disclose a processing unit "operative to transmit a control signal indicative of a command to be executed by the locomotive when a user authentication unit confirms that the user identification data belongs to an authorized user" [emphasis added].

As per § 2143.03 of the *Manual of Patent Examining Procedure*, in order to establish a *prima facie* case of obviousness, the combined prior art references must teach or suggest all of the claim limitations.

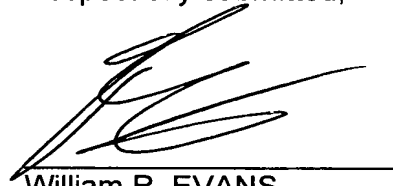
Since claims 46-49 depend from independent claim 43 and thus incorporate by reference all the limitations contained therein, and since none of the references cited by the Examiner disclose the above-emphasized limitation of independent claim 43, the Applicant respectfully submits that the combination of Kisak et al. and Shapiro is insufficient for establishing a *prima facie* case of obviousness as per § 2143.03 of the MPEP. Accordingly, the Examiner is respectfully requested to withdraw the rejection to claims 46-49.

IV. CONCLUSION

In view of the above, it is respectfully submitted that claims 14-21, 25, 29, 31, 33, 35, 37-41 and 43-49 are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of all of claims 14-21, 25, 29, 31, 33, 35, 37-41 and 43-49 at an early date is solicited.

If the claims of the application are not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims or in making constructive suggestions so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



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